

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	
)	ICC Docket No. 15-0541
Petition for Approval of the 2016 IPA)	
Procurement Plan Pursuant to)	
Section 16-111.5(d)(4) of the Public Utilities Act)	

**REPLY BRIEF ON EXCEPTIONS OF
THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois (“AG” or “the People”), by Lisa Madigan, Attorney General of the State of Illinois, pursuant to the schedule set by the Administrative Law Judge and Section 200.830 of the Illinois Commerce Commission’s (“the Commission” or “ICC”) Rules of Practice, 83 Ill. Admin. Code § 200.830, hereby file their Reply Brief on Exceptions (“RBOE”) in response to the Brief on Exceptions filed by various parties following the issuance of the November 13, 2015 Proposed Order relating to the Illinois Power Agency’s (“IPA”) 2016 Procurement Plan presented for Commission for approval.

This Reply Brief on Exceptions addresses an important topic now being addressed in the Stakeholder Advisory Group’s (“SAG”) three-year energy efficiency portfolio planning process¹: how to expand Section 8-103 programs that have not yet been approved by the Commission. In particular, the People’s RBOE responds to the Exceptions and proposed language filed by Commonwealth Edison Company (“ComEd”) and the IPA. As discussed below, this issue,

¹ Beginning in September, the SAG has met twice a month to work in a cooperative and iterative manner to develop the next three-year energy efficiency plan for each of the electric and gas utilities, as well as the Department of Commerce and Economic Opportunity. Such cooperation includes discussion of foundational issues to plan development; including budgets, portfolio objectives, program ideas, and program design. A primary purpose of these cooperative and iterative discussions is to reduce the number of non-consensus issues and litigation associated with the applicable three-year plan dockets. Proposals for inclusion of specific programs in the 2017 IPA Portfolio as part of a holistic, cost-effective approach to energy efficiency planning in Illinois is a part of these discussions.

correctly clarified by the IPA, should be resolved in the ongoing SAG portfolio planning process, where the topic is currently being addressed.

I. Issue: How Section 16-111.5B Programs Can Be Used to Expand Section 8-103 EE Programs That Have Not Yet Been approved by the Commission

Both the IPA and ComEd take exception to the Proposed Order's language that questions what is meant by an "expansion" of Section 8-103 energy efficiency programs, and seek to clarify the issue. The relevant portion of the Proposed Order states:

The parties do not define what is meant by "expansion" of Section 8-103 programs. It appears that Section 16-111.5B limits what can be offered, but only in so far as they should not duplicate that which is provided pursuant to Section 8-103. However, that does not mean, for example, that a different program that is related to an existing Section 8-103 program, but which does not duplicate a Section 8-103 program, would contravene Section 16-111.5B.

Proposed Order at 88. The IPA writes that a program "expansion" constitutes "taking a Section 8-103 program whose reach and budget is limited by the statutory rate impact cap present in Section 8-103(d)(5) (which necessitates an overall portfolio budget that often constrains the size of individual energy efficiency programs, even if more cost-effective energy efficiency could be achieved through a larger version of that program) and allows it to be 'expanded' to 'fully capture the potential for all achievable cost-effective savings' through inclusion in an IPA procurement plan." IPA BOE at 8-9. Thus the issue, as clarified by the IPA, occurs when parties seek to expand Section 8-103 programs as part of an IPA procurement that have not yet have been formally approved by the Commission in a Section 8-103 proceeding. *Id.* at 9.

ComEd argues that "programs or measures proposed under Section 16-111.5B cannot be considered in isolation or independent of the Section 8-103 portfolio." ComEd BOE at 3.

Rather, ComEd argues, each program proposed under Section 16-111.5B must be a new program (*i.e.*, not offered under Section 8-103) or an expanded program (*i.e.*, an enlargement of an existing program under Section 8-103). *Id.* ComEd further cites to a previous Commission order in Docket No. 13-0546 wherein the Commission concluded that a legislative change was needed to accommodate proposed expansions of Section 8-103 programs in years in which the Commission had yet to approve new Section 8-103 three-year plans. *Id.*

While neither party objects to the issue being addressed through the Stakeholder Advisory Group, ComEd seeks a revision of the language in the Proposed Order language based on this perceived problem, along with a reference to the Commission's prior conclusion from Docket 13-0546. ComEd BOE at 4. The IPA, for its part, proposes the following new language to clarify and address the issue:

As the Commission wishes to avoid the “unfortunate situation” referenced in Docket No. 13-0546 and as no legislative change appears imminent, these workshops should demonstrate a genuine commitment to resolving this problem consistent with the goal of capturing all achievable energy savings, and should consider solutions such as the conditional approval of Section 8-103 program expansions in the IPA's 2017 Plan and potential contractual mechanisms to accommodate uncertainty present through an unapproved Section 8-103 portfolio.

IPA BOE at 9. The Commission should adopt the IPA's proposed language on this point, with one caveat, as the proposal (unlike ComEd's proposed language) correctly identifies potential solutions to the issue that can be developed through a consensus-driven SAG process. The caveat to this concurrence is the IPA's reference to SAG “*workshops*.” Stakeholders and the utilities *are currently engaged* in a collaborative process through the SAG that seeks to develop a holistic energy efficiency portfolio for Ameren and ComEd for the next three-year plan, taking into account existing 8-103 programs, proposals for new programs and the potential expansion of

cost-effective programs and measures created by Section 16-111.5B of the Act. The Commission's final order should reference this SAG collaborative process for resolving this issue, rather than a new set of SAG workshops that would unnecessarily proceed on a parallel track.² With this caveat, adoption of the IPA's proposed language would ensure that this collaborative process continues on track, and will help ensure that a holistic approach to the planning of energy efficiency plans and programs is implemented.

The AG notes, too, that Section 16-111.5B provides that the procurement plans shall include "an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures." 220 ILCS 5/16-111.5B(a)(2). It can be argued that nothing in the language of Section 16-111.5B prohibits the approval of programs that have been approved by the Commission in previously approved Section 8-103 plans in those years when new Section 8-103 plans are pending. Regardless, the OAG is confident that a consensus can be reached on this issue that coordinates the utilities and Department's filing of proposed programs in their respective 8-103 plans and IPA bids for energy efficiency programs offered through the Section 16-111.5B process.

The bottom line is that the alleged problem is not insurmountable, and can and should be addressed through the SAG three-year energy efficiency portfolio planning collaborative process now underway. The OAG supports adoption of the language proposed by the IPA, with the above-mentioned caveat, on this point. The following changes should be made to the IPA's recommended Exceptions language appearing at page 6 of its BOE:

The Commission recognizes the challenges of "expansion" of Section 8-103 programs when the portfolio for such programs has not yet been

² Counsel for the People discussed this caveat with counsel for the IPA. Mr. Granahan stated that he had no objection to that change to their proposed final language.

approved. This creates a natural tension: while unapproved programs cannot easily be “expanded,” the law calls for IPA plans to “fully capture the potential for all achievable cost-effective savings,” which would presumably include expanded Section 8-103 programs.

In recognition of this challenge, the Commission directs for this topic to be addressed ~~at workshops conducted~~ by the Stakeholder Advisory Group (“SAG”) in the current three-year energy efficiency planning process now underway. As the Commission wishes to avoid the “unfortunate situation” referenced in Docket No. 13-0546 and as no legislative change appears imminent, these workshops should demonstrate a genuine commitment to resolving this problem consistent with the goal of capturing all achievable energy savings, and should consider solutions such as the conditional approval of Section 8-103 program expansions in the IPA’s 2017 Plan and potential contractual mechanisms to accommodate uncertainty present through an unapproved Section 8-103 portfolio.

II. CONCLUSION

Wherefore, the People of the State of Illinois respectfully request that the Commission enter an Order consistent with the recommendations in this Reply Brief on Exceptions and the OAG’s Brief on Exceptions.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
By Lisa Madigan, Attorney General

By: _____/s/

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